

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Damien Kytrell Ford,

Case No.: 2:21-cv-01742-APG-DJA

Petitioner,

## **Order Formally Appointing Federal Public Defender and Setting Briefing Schedule**

V.

Calvin Johnson, et al.,

## Respondents.

[ECF No. 14, 15]

The Federal Public Defender has filed notices of appearance on petitioner's behalf.<sup>1</sup> I will formally appoint the Federal Public Defender and set a briefing schedule

10 IT THEREFORE IS ORDERED that the Federal Public Defender is appointed as counsel  
11 for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent petitioner in all  
12 federal proceedings related to this matter, including any appeals or certiorari proceedings, unless  
13 allowed to withdraw.

14 IT FURTHER IS ORDERED that petitioner will have until up to and including 120 days  
15 from entry of this order within which to file an amended petition and/or seek other appropriate  
16 relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any  
17 implied finding as to the expiration of the federal limitation period and/or of a basis for tolling  
18 during the time period established. Petitioner always remains responsible for calculating the  
19 running of the federal limitation period and timely asserting claims, without regard to any  
20 deadlines established or extensions granted herein. That is, by setting a deadline to amend the  
21 petition and/or by granting any extension thereof, the court makes no finding or representation

<sup>1</sup> ECF No. 14, 15

1 that the petition, any amendments thereto, and/or any claims contained therein are not subject to  
2 dismissal as untimely. *See Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

3 IT FURTHER IS ORDERED that respondents must file a response to the amended  
4 petition, including potentially by motion to dismiss, within 60 days of service of the amended  
5 petition and that petitioner may file a reply within 30 days of service of an answer. The response  
6 and reply time to any motion filed by either party, including a motion filed in lieu of a pleading,  
7 will be governed instead by Local Rule LR 7-2(b).

8 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to the  
9 counseled amended petition must be raised together in a single consolidated motion to dismiss.  
10 In other words, the court does not wish to address any procedural defenses raised herein either in  
11 serial fashion in multiple successive motions to dismiss or embedded in the answer. Procedural  
12 defenses omitted from such motion to dismiss will be subject to potential waiver. Respondents  
13 must not file a response in this case that consolidates their procedural defenses, if any, with their  
14 response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims  
15 clearly lacking merit. If respondents do seek dismissal of unexhausted claims under §  
16 2254(b)(2): (a) they must do so within the single motion to dismiss not in the answer; and (b)  
17 they must specifically direct their argument to the standard for dismissal under § 2254(b)(2) set  
18 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural  
19 defenses, including exhaustion, must be included with the merits in an answer. All procedural  
20 defenses, including exhaustion, instead must be raised by motion to dismiss.

21 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents must  
22 specifically cite to and address the applicable state court written decision and state court record  
23 materials, if any, regarding each claim within the response as to that claim.

1 IT FURTHER IS ORDERED that, notwithstanding Local Rule LR IC 2-2(g), paper  
2 copies of any electronically filed exhibits need not be provided to chambers or to the staff  
3 attorney, unless later directed by the court.

4 DATED: March 8, 2022

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6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE  
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